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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

South Africa (on behalf of the Group of African States): draft resolution

31/... The negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, and the importance of improving international cooperation

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Reaffirming the Universal Declaration of Human Rights, the Declaration on the Right to Development, the Vienna Declaration and Programme of Action and other relevant human rights instruments,

Recalling General Assembly resolutions 60/251 of 15 March 2006, 62/219 of 22 December 2007 and 65/281 of 17 June 2011, and Human Rights Council resolutions 5/1 and 5/2 of 18 June 2007, 11/11 of 18 June 2009 and 16/21 of 25 March 2011,

Recalling also General Assembly resolutions 54/205 of 22 December 1999, 55/61 of 4 December 2000, 55/188 of 20 December 2000, 56/186 of 21 December 2001, 57/244 of 20 December 2002, 58/205 of 23 December 2003, 59/242 of 22 December 2004, 60/1 of 16 September 2005, 60/207 of 22 December 2005, 61/209 of 20 December 2006, 62/202 of 19 December 2007, 63/226 of 19 December 2008, 64/237 of 24 December 2009, 65/1 of 22 September 2010, 65/169 of 20 December 2010, 67/192 of 20 December 2012, 68/195 of 18 December 2013, 68/309 of 10 September 2014 and 69/199 of 18 December 2014,

Recalling further Human Rights Council resolutions 17/23 of 17 June 2011, 19/38 of 23 March 2012, 22/12 of 21 March 2013, 25/9 of 27 March 2014 and 28/5 of 26 March 2015,

Reaffirming the commitments of States parties to the United Nations Convention against Corruption thereunder, recognizing that the Convention is aimed at promoting and strengthening measures to prevent and combat corruption more efficiently and effectively, and that the return of assets is one of the main objectives and a fundamental principle of the said Convention, and that States parties are obligated to accord one another the widest measure of cooperation and assistance in this regard,

Reiterating the commitment to ensure the effective enjoyment of all civil, political, economic, social and cultural rights for everyone, including the right to development, and the obligation of all States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms,

Reaffirming that all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law, and that in no case may a people be deprived of its own means of subsistence,

Recognizing that respect for and adherence to the principles of transparency, accountability and participation are critical factors in ensuring prudent use of returned illicit funds,

Recognizing also that fighting corruption at all levels is a priority and that flows of funds of illicit origin deprive Governments, in particular in developing countries, of resources required to progressively realize human rights, including economic, social and cultural rights, and in particular the right to development, in such a way that threatens the stability and sustainable development of States, undermines the values of democracy, the rule of law and morality and jeopardizes social, economic and political development, especially when an inadequate national and international response leads to impunity,

Recalling the United Nations Convention against Corruption, underlining its central role in fostering international cooperation to combat corruption and to facilitate the repatriation of the proceeds of corruption-related crimes, and stressing the need for universal adherence to the Convention and for its full implementation, as well as the full implementation of the resolutions and decisions of the Conference of the States parties to the Convention, particularly those adopted at its fourth and fifth sessions;

Recalling also that the United Nations Convention against Corruption underlines that States parties should not decline to render mutual legal assistance, pursuant to the Convention, including on the ground of bank secrecy, and in accordance with the domestic law of the requested State;

Noting with concern that financial systems characterized by high levels of financial secrecy combined with low tax rates can play a role in attracting various kinds of illicit funds in a way that can lead to depriving countries of resources required to realize human rights, and to jeopardizing social, economic and political development,

Concerned that the relative amount of wealth from developing countries held abroad is much greater than that from developed countries, and that a significant amount of that wealth held offshore may involve illicit funds,

Welcoming the adoption by the General Assembly of the 2030 Agenda for Sustainable Development,[1] and the inclusion therein of target 16.4, which underlines the commitment of States to significantly reduce by 2030 illicit financial and arms flows, to strengthen the recovery and return of stolen assets and to combat all forms of organized crime,

Welcoming also the adoption by the Third International Conference on Financing for Development, held in Addis Ababa in July 2015, of the Addis Ababa Action Agenda,[2] which underlined, in particular, that measures to curb illicit financial flows will be integral for achieving sustainable development,

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[1] General Assembly resolution 70/1.

[2] General Assembly resolution 69/313.

Affirming that making progress on the implementation of targets 16.4, 16.5 and 16.6 of the 2030 Agenda for Sustainable Development will make an important contribution not only to achieving various other goals included in the Agenda but also to the enjoyment of human rights, in particular economic, social and cultural rights,

Welcoming the convening of an experts meeting on the issue of the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, pursuant to Human Rights Council resolution 28/5,

Taking note of the work carried out by different United Nations bodies, including the United Nations Office on Drugs and Crime, and international and regional organizations in preventing and combating all forms of corruption,

Bearing in mind that the prevention and eradication of corruption is a responsibility of all States, and that States should cooperate with one another, in accordance with the United Nations Convention against Corruption, with the support and involvement of other stakeholders,

Encouraging all relevant United Nations mechanisms to continue their consideration of the negative impact of illicit financial flows on the enjoyment of human rights, to further explore policy responses to the phenomenon and to coordinate their efforts in this regard,

Recognizing that supportive domestic legal systems are essential in preventing and combating corrupt practices and the transfer of assets of illicit origin and in returning such assets, and recalling that the fight against all forms of corruption requires strong institutions at all levels, including at the local level, able to take efficient preventive and law enforcement measures consistent with the United Nations Convention against Corruption, in particular chapters II and III thereof,

Appreciating the continued efforts of the Conference of the States Parties to the United Nations Convention against Corruption, through its various intergovernmental working groups, to oversee the review process of the implementation of the Convention, to advise on the provision of technical assistance for building institutional and human capacity in States parties for the prevention of corruption, and to enhance international cooperation, including in the repatriation of funds of illicit origin,

Taking note with appreciation of the Lausanne process initiative on practical guidelines for efficient asset recovery, developed by 30 States parties in close collaboration with the International Centre for Asset Recovery and with the support of the Stolen Asset Recovery Initiative of the World Bank and the United Nations Office on Drugs and Crime, which are aimed at providing effective and coordinated approaches to asset recovery for t from requesting and requested States.

Affirming the responsibilities of requesting and requested States in the repatriation of funds of illicit origin, cognizant that countries of origin must seek repatriation as part of their duty to ensure the application of the maximum available resources to the full realization of all human rights for all, including the right to development, address human rights violations and combat impunity, and that recipient countries, on the other hand, have a duty to assist and facilitate repatriation, including through judicial assistance, as part of their obligation of international cooperation and assistance under chapters IV and V of the United Nations Convention against Corruption and in the field of human rights,

Recalling that the repatriation of funds of illicit origin requires the close and transparent coordination and cooperation of requesting and requested States, including between competent authorities, in particular the judicial authorities, within the shared responsibility to facilitate efficient international cooperation for the prompt recovery of assets of illicit origin,

Concerned at the difficulties, in particular the practical difficulties, that both requested and requesting States face in the repatriation of funds of illicit origin, taking into account the particular importance of the recovery of stolen assets for sustainable development and stability, and noting the difficulties of providing information establishing a link between the proceeds of corruption in the requested State and the crime committed in the requesting State, which in many cases may be difficult to prove, bearing in mind that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law,

Recognizing that States continue to face challenges in recovering funds of illicit origin owing to, inter alia, differences in legal systems, the complexity of multijurisdictional investigations and prosecutions, lack of familiarity with the mutual legal assistance procedures of other States and difficulties in identifying the flow of funds of illicit origin, noting the particular challenges in recovering them in cases involving individuals who are or have been entrusted with prominent public functions and their family members and close associates, and recognizing that legal difficulties are often exacerbated by factual and institutional obstacles,

Asserting the urgent need to repatriate illicit funds to the countries of origin without conditionalities, in accordance with the United Nations Convention against Corruption and the commitments made at the 2005 World Summit and the 2010 high-level plenary meeting of the General Assembly on the Millennium Development Goals to make the fight against corruption a priority at all levels and to curb the illicit transfer of funds, and urging all States to step up their efforts to trace, freeze and recover those funds,

Noting the particular concern of developing countries and countries with economies in transition regarding the need to return assets of illicit origin derived from corruption, in particular to countries from which they originated, consistent with the principles of the United Nations Convention against Corruption, in particular chapter V thereto, so as to enable countries to design and fund development projects in accordance with their national priorities in view of the importance that such assets can have to their sustainable development,

1. *Takes note with appreciation* of the final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development prepared by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights;[3]

2. *Welcomes* the report of the High-level Panel on Illicit Financial Flows from Africa, which highlighted the gravity of the problem of illicit financial flows in the continent, ranging from $50 billion to $60 billion a year;

3. *Calls upon* all States that have not yet acceded to the United Nations Convention against Corruption to consider doing so as a matter of priority;

4. *Urges* requesting and requested States to cooperate to recover the proceeds of corruption, in particular, embezzled public funds, stolen assets and unaccounted-for assets, including those that are found in safe havens, and to demonstrate strong commitment to ensuring the return or disposal of such assets, including their return to the countries of origin;

5. *Calls upon* all States to consider enacting legislation to address offences by business enterprises, including multinational corporations, that deprive Governments of

[3] A/HRC/31/61.

legitimate domestic sources of revenue for the implementation of their development agendas, in compliance with their international obligations, including international human rights law;

6. *Also calls upon* all States to seek to reduce opportunities for tax avoidance, to consider inserting anti-abuse clauses in all tax treaties and to enhance disclosure practices and transparency in both source and destination countries, including by seeking to ensure transparency in all financial transactions between Governments and companies to relevant tax authorities;

7. *Asserts* the urgent need to repatriate illicit funds to the countries of origin without conditionalities, taking into account due process, to strive to eliminate safe havens that create incentives for transfer abroad of stolen assets and illicit financial flows, and to strengthen regulatory frameworks at all levels;

8. *Encourages* requested State parties to respond to requests for assistance and to adopt such measures as may be necessary to enable them to provide a wider scope of assistance, pursuant to article 46 of the United Nations Convention against Corruption in the absence of dual criminality;

9. *Calls upon* all States to consider waiving or reducing to the barest minimum reasonable expenses deducted when recovering assets, particularly when the requesting State is a developing country, bearing in mind that the return of illicitly acquired assets contribute to the promotion of sustainable development;

10. *Acknowledges* the importance of full compliance with international human rights law in relation to the repatriation of funds of illicit origin;

11. *Invites* the Conference of the States Parties to the United Nations Convention against Corruption to consider ways of adopting a human rights-based approach in the implementation of the Convention, including when dealing with the repatriation of funds of illicit origin, and appreciates the continued efforts of the Open-ended Intergovernmental Working Group on Asset Recovery of the Conference to assist States parties in fulfilling their obligations under the Convention to prevent, detect and deter in a more effective manner the international transfer of funds of illicit origin and to strengthen international cooperation in asset recovery;

12. *Notes with appreciation* the Stolen Assets Recovery Initiative of the World Bank Group and the United Nations Office on Drugs and Crime, and encourages coordination among existing initiatives;

13. *Notes* the importance of the International Monetary Fund and the World Bank publishing estimates of the volume and composition of illicit financial flows on an annual basis to monitor progress in implementing target 16.4 of the Sustainable Development Goals on illicit financial flows;

14. *Calls upon* States to continue to consider the establishment of an intergovernmental working group on the negative impact of illicit financial flows on the enjoyment of human rights, and to further explore policy responses to the phenomenon;

15. *Realizes* that, while illicit financial outflows from the least developed countries may account for only a small portion of all outflows of funds of illicit origin worldwide, they have a particularly negative impact on social development and the realization of social, economic and cultural rights in these countries, given the size of their economies;

16. *Underscores* that the repatriation of funds of illicit origin would provide States that are undergoing a democratization process with a further opportunity to improve

the realization of economic, social and cultural rights and to fulfil their obligation to meet the legitimate aspirations of their peoples;

17. *Acknowledges* the important role that civil society can play in exposing corruption and drawing attention to the negative impact of the non-repatriation of funds of illicit origin on the rule of law and the realization of economic, social and cultural rights, and reiterates in this context the obligation of States to protect reporting persons in accordance with article 33 of the United Nations Convention against Corruption and the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;

18. *Welcomes* national initiatives to adopt anti-money-laundering legislation as an important step in the fight against corruption and the willingness demonstrated by some States to cooperate in facilitating the repatriation of funds of illicit origin, and calls for more robust regulations in this regard, including through the implementation of policies aimed at reducing the flow of funds of illicit origin, ensuring their repatriation and the provision of technical assistance to developing countries;

19. *Encourages* all States to share best practices in the freezing and recovery of funds of illicit origin;

20. *Calls for* further international cooperation through, inter alia, the United Nations system, in support of national, subregional and regional efforts to prevent and combat corrupt practices and the transfer of assets of illicit origin, in accordance with the principles of the United Nations Convention against Corruption, and in this regard encourages close cooperation at the national and international levels between anti-corruption agencies, law enforcement agencies and financial intelligence units;

21. *Calls upon* all States requested to repatriate funds of illicit origin to uphold fully their commitment to make the fight against corruption a priority at all levels and to curb the illicit transfer of funds, in accordance with the United Nations Convention against Corruption, and to make every effort to achieve the repatriation of funds of illicit origin to the countries of origin in order to diminish the negative impact of non-repatriation, including on the enjoyment of human rights, in particular economic, social and cultural rights in the countries of origin by, inter alia, lowering the barriers imposed on requiring jurisdictions at the tracing stage and enhancing cooperation in this regard between competent agencies, in particular taking into account the risks of dissipation of those funds and, where appropriate, by delinking confiscation measures from a requirement of conviction in the country of origin;

22. *Calls upon* all States requesting the repatriation of funds of illicit origin to uphold fully their commitment to make the fight against corruption a priority at all levels and to curb the illicit transfer of funds, and to apply the principles of accountability, transparency and participation in the decision-making process regarding the allocation of repatriated funds to the realization of economic, social and cultural rights in order to improve prevention and detection procedures, correct identified weaknesses or mismanagement, prevent impunity, provide effective remedies directed at creating conditions for avoiding new human rights violations and improve the overall administration of justice;

23. *Reaffirms* that it is the obligation of the State to investigate and prosecute corruption, calls upon all States to strengthen criminal proceedings directed at freezing or restraining funds of illicit origin, and encourages requesting States to ensure that adequate national investigative procedures have been initiated and substantiated for the purpose of presenting mutual legal assistance requests, and in this context encourages requested States to provide information on legal frameworks and procedures to the requesting State and to remove barriers to asset recovery, including by simplifying their legal procedures;

24. *Underlines* that there is also a corporate responsibility to comply with and respect all applicable laws and human rights, and a need for greater access to effective remedies by victims in order to realize effective prevention of, and remedy for, business-related human rights harm, as set out in the Guiding Principles on Business and Human Rights;

25. *Calls upon* requesting and requested States with practical experience in asset recovery to develop, as appropriate, in cooperation with interested States and providers of technical assistance, non-binding practical guidelines, such as a step-by-step guide for efficient asset recovery, with a view to enhancing effective approaches to asset recovery based on best practices, practical experience and the lessons learned from past cases, while being mindful to seek to add value by building upon existing work in this area;

26. *Encourages* State parties to consider, where appropriate, and in accordance with national law, the opportunity of referring to the draft Lausanne guidelines for efficient recovery of stolen assets in their practice;

27. *Stresses* the need for transparency in financial institutions and effective due diligence measures to be applied by financial intermediaries, calls upon States to seek appropriate means in accordance with their international obligations to ensure the cooperation and responsiveness of financial institutions to foreign requests to freeze and recover funds of illicit origin and the provision of an efficient mutual legal assistance regime to States requesting repatriation of those funds, and encourages the promotion of human and institutional capacity-building in that regard;

28. *Recalls* the importance of the mechanism for the review of implementation of the United Nations Convention against Corruption, and urges States parties to comply with their obligations in the conduct of country reviews to enhance effective implementation of the Convention as a preventive measure for the outflow of illicit financial flows;

29. *Invites* the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, to continue to consider the impact of illicit financial flows on the enjoyment of human rights as part of the mandate;

30. *Requests* the Advisory Committee of the Human Rights Council to conduct a comprehensive research-based study on the impact of flow of funds of illicit origin and the non-repatriation thereof to the countries of origin on the enjoyment of human rights, including economic, social and cultural rights, with a special emphasis on the right to development, with a view to compiling relevant best practices and main challenges, and to make recommendations on tackling those challenges based on the best practices in question, and to present a progress report on the requested study to the Human Rights Council at its thirty-sixth session for its consideration;

31. *Also requests* the Advisory Committee to seek, if necessary, further views and the input of Member States, relevant international and regional organizations, the United Nations High Commissioner for Human Rights and relevant special procedures, as well as national human rights institutions and non-governmental organizations, in order to finalize the above-mentioned study, taking into account, inter alia, the final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights;

32. *Requests* the United Nations High Commissioner for Human Rights to provide all assistance and financial resources necessary to allow the Independent Expert to carry out the mandate set out in the present resolution, and calls upon all relevant

stakeholders, including States and United Nations bodies and agencies, and other international and regional entities to cooperate fully with the Independent Expert in this regard

33. *Requests* the Secretary-General to bring the present resolution to the attention of all Member States and the forums dealing with the issue of the repatriation of funds of illicit origin within the United Nations system for consideration and necessary action and coordination as appropriate, particularly within the context of the Conference of the States Parties to the United Nations Convention against Corruption;

34. *Decides* to continue its consideration of this matter under the same agenda item.